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**Via Hand Delivery**

NHPUC 18OCT'19PM2:49

Ms. Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, New Hampshire 03301

**Re: Docket No. DE 19-142; PSNH - Rate Recovery of Costs in Excess of the Cumulative Reduction Cap Under the Power Purchase Agreement with Berlin Station, LLC**

Dear Director Howland:

Burgess Biopower, LLC (“Burgess”) submits this letter in response to the October 16, 2019 letter of Eversource Energy (“Eversource” or “Company”) in the above-referenced docket. In its letter, the Company outlined its position on how costs associated with the PPA would be handled now that the cap on the cumulative reduction factor (“CRF”) has been reached, and in light of the enactment of Laws of 2018, ch. 340 (“SB 577”). While Burgess understands the Company’s position, it respectfully disagrees with it.

When the Commission approved the PPA, it included the CRF and the \$100 million cap to “mitigate the risk of over-market energy prices to default service customers.” DE 10-195 Order 25,213 (April 18, 2011) at 93. Thus, operation of the \$100 million cap served to mark the point in time when the economic risks associated with the PPA shifted away from the ratepayers. While this was the situation at the time of the Commission’s Order in 2011, in 2018 the legislature made the policy decision that, given the value of the Berlin Facility to the State as a whole, the timing of the risk-shifting mechanism should change, and it passed SB 577.

The language of SB 577 is clear: “suspend the operation of the cap on the cumulative reduction fund” for a period of three years. The legislature’s inclusion of the words “*operation of the cap*” demonstrates its recognition that, in order to support its policy decision in SB 577, i.e., “the continued operation of the Burgess BioPower plant,” the costs associated with the PPA once the cap was reached would necessarily continue to be recovered through the Stranded Cost Recovery Charge (“SCRC”), and not from Burgess or the Company’s shareholders. To conclude otherwise would render the statute meaningless. Nor could the legislature, in passing SB 577, have meant that once the cap on the CRF was reached the parties would continue with business as usual under the PPA; if that was its intent, the legislature would simply have chosen not to pass the bill.

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Notwithstanding its position that the legislature, in enacting SB 577, intended to provide Burgess immediate protection once the CRF cap was reached by suspending operation of the CRF cap and continuing cost recovery through the SCRC, Burgess agrees that the negotiations between the parties to the PPA have been open, cooperative, and meaningful. Accordingly, Burgess supports the Company's recommendation that the parties continue, as they have done for the past year, to negotiate in good faith, without deciding the ultimate issue of cost recovery at this time. In addition, Burgess requests that the Commission schedule a status conference on or about November 15, 2019, so that the parties can report on the current state of negotiations.

Very truly yours,



Carol J. Holahan  
Counsel

CJH/md  
cc: DE 19-142 Service List